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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,013	02/25/2004	Kirsten Lauridsen	17494	3965
23389 7590 11/25/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
WONG, LESLIE A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
11/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/787,013

Applicant(s)

LAURIDSEN, KIRSTEN

Examiner

Leslie Wong

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-44, 46-54 and 56-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-44, 46-54, and 56-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Upon further review, a rejection under 35 U.S.C. 112, first paragraph is set forth below.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 42-44, 46-54, and 56-63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant does not clearly teach "in the absence of an intense sweetener." For example, the Specification (page 10, last paragraph) refers to both the presence and absence of intense sweeteners. Applicant's specification excludes an intense sweetener from being "a sweet tasting sugar compound" but does not exclude an intense sweetener from the product as a whole (see page 7, last paragraph).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 42-44, 46-54, 56, and 57 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wong et al (EP 0447359), JP 7067536, and Yotka et al (US 5525360).

Wong et al (EP 0447359) teach a synergistic sweetening composition comprising polydextrose, monosaccharides, and/or disaccharides as is claimed (see entire document, especially page 9, lines 38-51).

JP 7067536 teaches the combination of polydextrose and sugar (see abstract).

Yotka et al (US 5525360) teach a composition comprising polydextrose and additional sugar compounds including sucrose and maltose (see entire document, especially claims 7 and 9).

The claims appear to differ as to the specific recitation of pH and acidity.

The pH and acidity would be no more than inherent and/or obvious to that of Wong et al, JP 7067536, and Yotka et al as these values are inherent and/or obvious to a commercially available polydextrose product. It is noted that Applicant's polydextrose is a commercially available product.

Synergism would be obvious to that of Wong et al, JP 7067536, and Yotka et al as the same components are used. It is also noted that the concept of synergism in the

sweetener art is well-known and expected. Schiffman et al (Chem Senses) is cited as one example of synergism in the sweetener art (see entire document).

Claims 58-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al (EP 0447359), JP 7067536, and Yotka et al (US 5525360).

Wong et al (EP 0447359), JP 7067536, and Yotka et al (US 5525360) are cited as above.

The claims differ as to the recitation of specific food products.

Once the art has recognized the use of a sweetener combination, its use and manipulation in different food products would be well-within the skill of the art.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the polydextrose/sugar compositions as taught by Wong et al (EP 0447359), JP 7067536, and Yotka et al (US 5525360) in different food products as once the art recognized the use of a sweetener combination, its use and manipulation in different food products would be conventional.

In the absence of a showing of unexpected results, Applicant is using known components to obtain no more than expected results.

Applicant's arguments filed August 12, 2008 have been fully considered but they are not persuasive.

Applicant argues that the claimed enhancement takes place in the absence of an intense sweetener.

The prior art teaches the combination of polydextrose and a mono- or disaccharide as is claimed. Synergism would be inherent to that of Wong et al, JP 7067536, and Yotka et al as the same components are used.

It is further noted that the recitation "in the absence of an intense sweetener" does not clearly exclude additional components in the product. "(I)n the absence of an intense sweetener" serves to exclude an intense sweetener from being "a sweet tasting sugar compound" but does not exclude an intense sweetener from the product as a whole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (571)272-1411. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie Wong/
Primary Examiner, Art Unit 1794

LAW
November 20, 2008